

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LINDA L. CRISMAS)	
Claimant)	
)	
VS.)	
)	
CENTER INDUSTRIES CORPORATION)	
Respondent)	Docket No. 1,020,834
)	
AND)	
)	
HARTFORD CASUALTY INS. CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (respondent) requested review of the November 7, 2006, Award entered by Special Administrative Law Judge (SALJ) Marvin Appling. The Board placed this appeal on its summary docket for disposition without oral argument.¹

APPEARANCES

James B. Zongker, of Wichita, Kansas, appeared for claimant. Patricia A. Wohlford, of Overland Park, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

¹ For purposes of K.S.A. 2005 Supp. 44-551(b)(1), January 19, 2007, the day following the date the last brief was due, is the date arguments were presented to the Board.

ISSUES

The SALJ found that claimant had a date of injury of December 1, 2004, and that she had a 15 percent functional impairment to the body as a whole.

Respondent argues that the SALJ erred in finding that claimant sustained personal injury by accident and that claimant's alleged accidental injury arose out of and in the scope of her employment. In the event the Board finds that claimant did suffer a series of work-related injuries, respondent requests that the Board find that claimant did not suffer any permanent impairment.

Claimant requests that the Award entered by the SALJ be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs, the Board makes the following findings of fact and conclusions of law:

In her Application for Hearing, claimant alleged she suffered a series of injuries to her bilateral hands, wrists, and shoulders through December 1, 2004.² At the October 26, 2005, Regular Hearing, claimant alleged she continued to suffer a worsening of her condition up to the present.³ She said she is claiming injuries to her hands up to her shoulders as a result of working in respondent's bindery department. As part of her job, she was repetitively "pulling no writes, tags, tape, sticking them on temporary car tags."⁴ She was also required to drill holes in the temporary car tags. In order to complete these tasks, she used her hands and arms to grasp, pull and push. The job was intensely hand-repetitive.

Claimant began having problems with her hands commencing October 19, 2004. She said both hands developed problems at the same time, but her right arm was worse than the left. She then over-compensated and started using the left arm more often, and now her left arm hurts worse than the right. The pain went from her hands up into her shoulders. Respondent sent claimant to Dr. Hubin. Dr. Hubin sent her to Dr. Hearon, an orthopedic surgeon. Dr. Hearon recommended that claimant rotate her jobs at respondent.

Claimant stated that even though she rotates her jobs at respondent as recommended by Dr. Hearon, she continues to have pain in her hands, arms and

² Form K-WC E-1 filed Dec. 28, 2004.

³ R.H. Trans. at 5 and 13.

⁴ *Id.* at 11.

shoulders that has gotten worse. Her hands swell from the wrist on up. She has extreme pain in her left wrist to the upper shoulder. On the right, her hand swells and hurts, and she has pain at her wrist and elbow. She continues to work at respondent, though in a different department.

Dr. Pedro Murati is a board certified independent medical examiner and is also board certified in electrodiagnostic medicine and in physical medicine and rehabilitation. He saw claimant on February 7, 2005, and on April 28, 2005, at the request of claimant's attorney.

On February 7, 2005, claimant's chief complaints were right and left wrist pain and right and left shoulder pain. Upon examination, Dr. Murati found that claimant had a decrease in sensation to the first and second digits bilaterally. She also had muscle weakness and a positive carpal compression test bilaterally. Dr. Murati also found trigger points in her right shoulder, cervical paraspinals, and thoracic paraspinals. He diagnosed claimant with bilateral carpal tunnel syndrome with proximal pain referral pattern and myofascial pain syndrome of the right shoulder, neck, and thoracic spine. Dr. Murati requested further testing, including bilateral upper extremity NCS/EMG, as well as physical therapy, splinting, anti-inflammatory and pain medication as needed, and possibly cortisone injections. If claimant failed to improve, then surgery would be considered. He also recommended temporary work restrictions.

Dr. Murati saw claimant again on April 28, 2005. Her chief complaints on that date were pain in both shoulders, elbows, forearms and wrists. She said she had not had any additional treatment. Dr. Murati found no specific sensory pattern deficit on sensory examination to pinprick of her upper extremities. Claimant's carpal compression test was negative bilaterally. Her elbow examination showed no epicondylar tenderness or crepitus, and full range of motion was noted. Claimant had a negative rotator cuff test, Hawkin's test and O'Brien's test. Dr. Murati found no impingement bilaterally and no instability was noted in either shoulder. Claimant had full range of motion at the shoulders with no crepitus. Trigger points were noted at the right shoulder girdle extending into the cervical paraspinals and thoracic paraspinals. Dr. Murati diagnosed claimant with myofascial pain syndrome of the right shoulder and the cervical and thoracic spine, as well as early and mild bilateral carpal tunnel syndrome. He opined that claimant's diagnoses are a direct result of her work-related injury at respondent.

Using the AMA *Guides*,⁵ Dr. Murati placed claimant in the cervicothoracic diagnosis related estimate (DRE) Category II for her myofascial pain syndrome affecting the cervical paraspinals, for a 5 percent whole person impairment. For her myofascial pain syndrome affecting the thoracic paraspinals, Dr. Murati placed her in the thoracolumbar DRE

⁵ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

Category II for a 5 percent whole person impairment. For claimant's early and mild bilateral carpal tunnel syndrome, he gave claimant a 5 percent upper extremity impairment which converts to a 3 percent whole person impairment for each. Dr. Murati said that using the Combined Values Chart in the *AMA Guides*, claimant's whole person impairments combined for a 15 percent permanent partial impairment to the body as a whole.⁶

Dr. Murati gave claimant permanent restrictions of no climbing ladders; no crawling; no heavy grasping with both hands; no above shoulder-level work with both arms; no lifting, carrying, pushing or pulling greater than 20 pounds; only occasional repetitive grasping and grabbing; frequent repetitive hand controls; lifting, carrying, pushing and pulling to 10 pounds, no work more than 18 inches away from the body in both arms; avoid awkward positions of the neck; use wrist splints on both hands while working and at home; no use of hooks or knives; and no use of vibratory tools.

Dr. Murati reiterated his recommendations for additional testing and treatment from his earlier examination and said pain management was also appropriate. As for the negative bone scan results, Dr. Murati said that was what he would expect with the injuries he diagnosed.

Dr. George Lucas, an orthopedic surgeon who specializes in hand surgery, examined claimant at the request of respondent on May 22, 2006. Claimant gave a history of developing pain in the right shoulder with pain down her right arm. She was treated with a brace. She subsequently began to develop pain in the left arm and states she now cannot hold anything with her left arm. She continues to have a burning pain in her right hand and pain in the right shoulder. She has numbness in her right hand that involves the dorsum of the radial aspect of her hand. A bone scan was normal, which would indicate an absence of inflammatory conditions, such as tendinitis and arthritis.

Upon examining claimant, Dr. Lucas found no objective findings in either upper extremity. She had no swelling or arthritic deformity or atrophy of either hand. Although claimant complained of swelling in her left hand, Dr. Lucas found no swelling. Claimant's grip strength was normal. Range of motion in claimant's wrists, elbows and shoulders was normal. She had no crepitus with shoulder motion and negative impingement signs. Dr. Lucas diagnosed claimant with pain dysfunction syndrome. He described her as a patient who has pain but who has no physical findings to support those complaints. Claimant only has subjective complaints of pain.

Dr. Lucas said that claimant's current job probably aggravates her symptoms, but her work did not cause her symptoms. By that he said he meant she did not have an obvious accident at work, such as a fall. Dr. Lucas was not asked about whether repetitive

⁶ Actually, using the Combined Values Chart, 5 + 5 + 3 + 3 equals 16 percent, not 15 percent. But this was not pointed out to the ALJ or Board by either party.

use could cause her symptoms. He opined that she is at maximum medical improvement and did not suggest any future treatment. He found she had no permanent impairment that could be rated. Dr. Lucas admitted that sometimes pain can be considered a rateable condition using the *AMA Guides*. He will give a rating for pain when he has a patient who has, for instance, had a fracture and a continuing complaint of pain. He did not classify claimant as a malingerer and said that her pain is probably real to her and he believed that claimant's work was aggravating and accelerating her symptoms and conditions. Nevertheless, he would not give a rating for her pain without physical findings, nor recommend any treatment nor provide any restrictions. He did say that claimant would benefit from getting into some other type of work that is not so hand intensive.

The Board agrees with the SALJ and finds a causal connection between the work claimant performed with respondent, before she received restrictions and was accommodated, and the injuries she suffered to her hands, wrists, arms and shoulders. However, the Board is not persuaded that Dr. Murati's opinions should be adopted in toto. Claimant made complaints to Dr. Murati that were absent from the records of claimant's treating physicians. Furthermore, some of claimant's symptoms and findings at her first examination by Dr. Murati had improved or were absent by the time of his second examination of claimant. Claimant was even better by the time of her examination by Dr. Lucas. Apparently, changing her job duties with respondent eventually helped her condition, even though she testified to the contrary at the October 26, 2005, Regular Hearing. It is significant that claimant saw Dr. Lucas on May 22, 2006, which was well after her Regular Hearing testimony. And even at the time of the Regular Hearing, which was after the date she was last examined by Dr. Murati, claimant made no complaints concerning her neck, cervical area or upper back. Her complaints were only to the areas from her bilateral hands to her shoulders. Accordingly, Dr. Murati's 5 percent rating for myofascial pain syndrome in claimant's cervicothoracic area should be eliminated. That leaves Dr. Murati's 5 percent rating for myofascial pain syndrome affecting the thoracic paraspinals, which includes the shoulders, and his ratings for mild bilateral carpal tunnel syndrome. Using the Combined Values Chart, these ratings, 5 + 3 + 3, combine to an 11 percent whole person impairment. The SALJ's Award should be modified to find an 11 percent permanent partial disability.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Special Administrative Law Judge Marvin Appling dated November 7, 2006, is modified to find that claimant has an 11 percent permanent partial disability to the body as a whole.

Claimant is entitled to 45.65 weeks of permanent partial disability compensation at the rate of \$197.34 per week or \$9,008.57 for an 11 percent functional disability, making a total award of \$9,008.57.

As of February 14, 2007, there would be due and owing to the claimant 45.65 weeks of permanent partial disability compensation at the rate of \$197.34 per week in the sum of \$9,008.57 for a total due and owing of \$9,008.57, which is ordered paid in one lump sum less amounts previously paid.

The Board adopts the other orders of the SALJ to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this _____ day of February, 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Attorney for Claimant
Patricia A. Wohlford, Attorney for Respondent and its Insurance Carrier
Marvin Appling, Special Administrative Law Judge
Thomas Klein, Administrative Law Judge